IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.356 OF 2006

Shama Prakash Yadav & Anr .. ..Petitioner

Versus

Smt.Asha Jagannath Bansode and ors. ..Respondents

Mr.P.S.Dani for petitioners

Mr.Rajeshirke i/b S.S.Salunkhe for respondent no.2

CORAM : S. C. DHARMADHIKARI, J

DATE : 23RD FEBRUARY, 2006

P.C.:

1. This writ petition under Article 227 of the Constitution of India challenges the order passed by the lower appellate court on an application made for Stay in a pending Civil Appeal.

2. The petitioner-plaintiff succeeded in a suit for specific performance and the decree of the trial court grants specific performance of the agreement for sale so

also a permanent injunction in favour of the petitioner-plaintiff restraining the defendants, who are respondents before this court, from obstructing and interfering with the petitioner’s possession in respect of the suit land/property.

3. Aggrieved by the judgment and decree of the civil court, the respondents orig. defendants preferred Civil Appeal before the District Court and the lower appellate court has while admitting the appeal granted Stay of the judgment and decree passed by the trial court.

4. After having perused the judgment and decree of the trial court, in my view, there is much substance in the contention of Mr. Dani, learned counsel appearing for the petitioner, that, when the lower appellate court stays the decree of the trial court, in such cases, it cannot stay a decree for permanent injunction granted to protect possession of the petitioner-plaintiff. Grant of stay of such nature at this stage would amount to allowing the appeal itself. The learned counsel for the respondents orig. defendants submits that the entire decree must be stayed otherwise the appeal is rendered

infructuous.

5. In my view, the proper course is to Stay execution, implementation and enforcement of the decree for specific performance and execution of sale deed in pursuance thereof. However, the petitioner-plaintiff's possession cannot be interfered with when he has succeeded in proving it before the trial court. Until and unless the lower appellate court reverses that finding, the order of the trial court must hold the failed

6. The order under challenge is therefore set aside. It is clarified that the Stay granted by the Lower Appellate Court would operate only in so far as decree for specific performance.

7. The lower appellate court has expedited the hearing of the appeal and it is expected that it would decide the same expeditiously. These observations will not in any manner influence the lower appellate court while deciding the appeal, which shall be decided on its own merits and in accordance with law. The petition stands disposed off accordingly.

(S.C.Dharmadhikari,J.)